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October 4, 2021

Graham v. Prince, No. 1:15-cv-10160-SHS (S.D.N.Y.)
McNatt v. Prince, No. 1:16-cv-08896-SHS (S.D.N.Y.)

Dear Judge Stein:

This Firm represents plaintiffs Donald Graham and Eric McNatt (“Plaintiffs”) in the above-referenced actions. We write in response to the letter dated October 1, 2021 from Defendants Richard Prince, Blum & Poe, LLC and Blum & Poe New York, LLC (“Defendants”).

In their letter, Defendants assert they “were not specifically advised that they could file a reply brief”. The Court’s order of August 25, 2021 was not ambiguous: each side was ordered to submit one brief. Defendants had ample time (twenty-one days) and ample space (twenty-five pages) to discuss two decisions at the center of the Court’s order. Defendants already exceeded the scope of that order by using their brief to rehash arguments relying on prior authority and to introduce new authority with no discernible nexus to those two decisions. Defendants now seek to evade that unambiguous order further by requesting oral argument or an additional brief. Defendants even take the liberty of slipping more argument into their very request for argument—including a redux of their made-up “degree of defacement” test (now called “visual alteration analysis”) and urging adoption of a new framework based on “two distinct pathways to potential transformation”.

Plaintiffs respectfully submit that the parties have sufficiently briefed the Court on the cases referenced in Defendants’ letter. Particularly overbaked are Defendants’ arguments relying on *Authors Guild v. Google*, 804 F.3d 202 (2d Cir. 2015) and *Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F.3d 605 (2d Cir. 2006) (cases which Defendants cited *passim* in prior briefs and on a combined eleven pages of their supplemental memorandum). While Plaintiffs oppose Defendants’ request for further argument on matters already addressed comprehensively before the Court, Plaintiffs will of course proceed as the Court directs.

Respectfully,

/s/ Christopher P. Davis

Hon. Judge Sidney H. Stein
U.S. District Court, Southern District of New York
Daniel Patrick Moynihan United States Courthouse
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VIA ECF